

## Questions and Answers on Renewal Community (RC) Employment Credit (from the HUD Tax Incentive Guide)

The Renewal Community Employment Credit (RC Wage Credit) gives businesses an incentive to retain or hire individuals who both live and work in a Renewal Community (RC). Businesses can claim the credit if they pay or incur "qualified zone wages" to a qualified employee. The credit can be up to \$1,500 for the RC Wage Credit. The credit is available beginning January 1, 2002 and continues through December 31, 2009.

### **1. Are there any employer incentives for hiring employees who work in a RC?**

**Answer:** Yes. The tax code allows employers a credit against Federal taxes for hiring and retaining employees who live and work in a RC. RC Wage Credit is available in RCs since January 1, 2002, and will continue for all RCs through December 31, 2009.

### **2. Can a business use this credit for current employees?**

**Answer:** Yes. The RC Wage Credits are incentives to hire and retain individuals who live in an RC, so it is available each year throughout the RC Wage Credit periods. (January 1, 2001 - December 31, 2009)

### **3. How does a business document that an employee is an RC resident?**

**Answer:** The employer should obtain a statement from the employee, under penalty of perjury, that gives the address of the employee's principal residence and provides assurance that the employee will notify the employer of a change in the employee's principal residence. The local RC CoRA can confirm that the address is in the RC or a business can obtain the information over the Internet using the RC address locator. The statements are not filed with the business's tax return, but should be retained like any other documents that support a tax return.

### **4. What if the employee works part-time?**

**Answer:** The credit is available for both part-time and full-time employees as long as they have been employed by the employer for at least 90 days. The amount of the credit is tied to the amount of wages paid rather than to the number of hours worked.

### **5. What is the definition of qualified wages?**

**Answer:** Qualified wages are generally wages subject to the Federal Unemployment Tax Act (FUTA). The credit is calculated against a maximum of \$10,000 for the RC Wage Credit. A business may pay the employee more than \$10,000 for RCs, but the maximum for purposes of calculating the credit is \$10,000 for an RC. The instructions for IRS Form 8844 provide additional information on qualified wages.

### **6. What is the credit amount?**

**Answer:** The credit amount for the RC Wage Credit is 15 percent of wages up to the \$10,000 wage amount.

### **7. Is there a limit on the number of employees for which a business can take the credit?**

**Answer:** An employer can take the credit for as many employees as qualify.

### **8. What if the employee works in a RC for only part of the year?**

**Answer:** An employer can use either the pay-period or calendar-year method for determining the period of time the employee performs services in a RC. No other time periods can be used to prorate the credit. For example, if an employee works in several factory locations and is paid weekly, an employer can claim

the wage credit for the weekly pay periods during which the employee works substantially all of his or her time in the factory located in a RC. Substantially all is defined as 85 percent for the purposes of some of the tax incentives discussed in this guide, but the regulations on the RC Wage Credits do not define substantially all. The employer must use the same method for all employees, but may change the method applied to all employees from one taxable year to another.

**9. What if the business is located in a RC, but the employees spend part of their time working outside the boundaries of the RC?**

**Answer:** The credit is available only if substantially all of the services performed during the period (see answer to question above on pay-period and calendar year calculations) are in a RC. Substantially all is defined as 85% for purposes of some of the tax incentives discussed in this guide, but the regulations on the RC Wage Credits do not define substantially all. If an employee does not perform substantially all services inside a RC within the calculation period selected, the credit cannot be prorated and no portion of the wages for that period would qualify for the credit.

**10. What if the Federal tax liability of the business is less than the total credit amount?**

**Answer:** The RC Wage Credits generally are subject to the same rules as other business tax credits. As with other business tax credits, unused credit amounts can be carried forward for up to 20 years and carried back a year. However, the credit cannot be carried back prior to the RC designation.

**11. Are there special procedures for taking the RC Wage Credit?**

**Answer:** The credit is accounted for on IRS Form 8844 and would be part of a business's tax filing.

**12. Can nonprofit organizations benefit from the RC Wage Credits?**

**Answer:** Tax-exempt organizations, other than certain cooperatives, are ineligible for the credits.

**13. Can a pass-through entity, such as a partnership or S-corporation, use the credit?**

**Answer:** The RC Wage Credits are general business tax credits for Federal tax purposes and may be passed through under the rules similar to other business tax credits.

**14. Does the RC Wage Credit reduce Alternative Minimum Tax (AMT) liability?**

**Answer:** AMT may be reduced by 25 percent of the RC Wage Credit amount.

**15. Can the RC Wage Credit for an employee be taken concurrently with Work Opportunity Tax Credits (WOTC) or Welfare to Work (WtW) credits?**

**Answer:** Yes, but wages are not taken into account for the RC Wage Credit if they are being used in determining WOTC or WtW. In addition, the \$10,000 cap on wages taken into account for the RC Wage Credit, respectively, would be reduced by any wages taken into account in computing WOTC or WtW.

**16. Which categories of employees would not qualify for the RC Wage Credits?**

**Answer:** The RC Wage Credits cannot be taken for any individual employed at any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other gambling facility, or store whose principal business is the sale of alcoholic beverages for consumption off premises. The RC Wage Credits are not available for family members of the employer, including sons, daughters, parents, stepchildren, stepmothers, stepfathers, in-laws, and other persons treated as dependents under the tax code. Similar exclusions apply to 5 percent owners related to the employer and family members of majority shareholders or partners of the employer.

**17. Can entities that lease their employees use the credit?**

**Answer:** Employers should check with their tax advisors. The RC Wage Credits are based on FUTA wages, so the ability to take the credit will depend on who the employer is for purposes of the FUTA wages.

**18. Is there a definition of employee?**

**Answer:** The credit is tied to wages as defined for purposes of FUTA. Any individual treated as an employee under FUTA would generally be treated as an employee for purposes of the EZ Wage Credit.

**19. Can the RC Wage Credit be taken for farmworkers?**

**Answer:** If the employer's principal activity is farming, the credit is available for employees only if the sum of value of the assets owned or leased by the employer for use in the farming business does not exceed \$500,000. The definition of farming and the method for calculating the value of the assets are found in the tax laws, ***and the employer should consult its legal advisor on this matter before taking the credit.***

**20. How does the credit affect the deduction for salaries and wages?**

**Answer:** A business must reduce the deduction for salaries and wages by the amount of the credit taken.

**21. Where can a business obtain more information on this incentive?**

**Answer:** A business should consult with its tax advisor. IRS Publication 954 and IRS Form 8844 describe this incentive. For copies call 1-800-829-3676 or visit [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

## Questions and Answers on Renewal Community (RC) Employment Credit (July 2002)

**1. Can a business benefiting from Renewal Community tax credits transfer those credits to another business entity, i.e., a flow-through entity?**

**Answer:** No. There is no provision in the Internal Revenue Code (IRC) that allows one entity to transfer an unused Renewal Community employment credit to another entity.

**2. With respect to the employment tax credit, can an employer count the time an employee is on a tour boat in, for example, Lake Champlain that starts and stops its tours in the Renewal Community?**

**Answer:** To qualify for the credit, substantially all of the services performed by the employee for the employer must be performed within the Renewal Community. Any services that are performed outside of the Renewal Community's geographic boundaries would not count under this test.

**3. A company is located in an Empowerment Zone and leases employees from a third party employer (which is located outside the EZ). The company pays the third party employer a fee that includes gross wages, payroll taxes and administrative fees. These leased employees are residents of the EZ and work 100% of their available time at the company. Who can take advantage of the EZ Employment Credit - the company or the third party employer?**

**Answer:** Only the employer for Federal employment tax purposes is eligible for the credit. See IRS Publication 15-A for more information on the treatment of leased employees for employment tax purposes.

**4. With respect to EZ or RC Employment Credits, is the 90-day period calculated based on the calendar, or on days worked?**

**Answer:** The 90-day test is based on calendar days, not days worked.

**5. Are tips considered Qualified Wages in order to determine the Renewal Community Employment Credit?**

**Answer:** No. Wages are defined in IRC section 1397 by reference to IRC section 51, which in turn defines them by reference to IRC section 3306(b). Because tips are counted as wages under IRC section 3306(s), not IRC section 3306(b), tips do not count as wages for figuring the Renewal Community employment credit.

**6. If the tax year for a business is other than the calendar year, when would the business claim the Renewal Community/Empowerment Zone wage credits? For example, if the business's fiscal year runs from October 1, 2001 through September 30, 2002, should it claim all credits earned during this period when it files its 2002 tax return or should it claim the October - December 2001 credits in its 2001 tax return and then claim the January - September 2002 credits in its 2002 tax return?**

**Answer:** The credit is based on the qualified wages paid or incurred during the CALENDAR YEAR that ENDS DURING the taxpayer's FISCAL YEAR.

EXAMPLE: For a taxpayer with a fiscal year ending on September 30, the credit for CALENDAR YEAR 2002 wages is claimed on Form 8844 for the FISCAL YEAR that begins October 1, 2002 and ends on September 30, 2003. That's because December 31, 2002 falls within the fiscal year ending September 30, 2003.

Therefore, for the wages paid or incurred from January 1 - December 31, 2001 (Renewal Community/Empowerment Zone employment credit only), the credit would be claimed on the return for the fiscal year that begins on October 1, 2001, and ends on September 30, 2002. For the wages paid or incurred from January 1 - December 31, 2002, the credit would be claimed on the return for the fiscal year that begins on October 1, 2002, and ends on September 30, 2003. Therefore, even though the taxpayer's DEDUCTION is for fiscal year wages, the CREDIT is for calendar year wages.

NOTE: This rule applies ONLY to the Empowerment Zone and Renewal Community employment credit. The work opportunity credit, welfare-to-work credit, and Indian employment credit all use FISCAL YEAR wages.

7. Based on the 1990 Census Tract data, one major employer's address is located in the RC. The firm has several adjacent buildings connected by pedestrian walkways that are physically located outside the RC, simply by the demarcation lines of the census tract. If all the connected buildings have one central address, however, that is located in the RC, can all the buildings be considered to be inside the RC?

**Answer:** Under IRC section 1397C(f), if a business uses real property located both within and outside an RC, and the amount of the real property located within the RC is "substantial" when compared to amount of the real property located outside the RC and contiguous to the real property within the RC, the contiguous property is treated as being within the RC. However, this rule applies only for purposes of defining a "Renewal Community business." For any other purpose, the taxpayer can get an answer by submitting a private letter ruling request to the IRS.

8. Can a building construction site in a Renewal Community qualify for Renewal Community employment credits?

**Answer:** The RC employment credit is available for any employee that performs substantially all of its services during the period in the RC and also lives in the RC. The IRS has interpreted the language "the period" to include pay periods. So if an employee is working at a construction site for substantially all of specified pay periods, the wages paid during those pay periods would be qualified wages eligible for the 15% credit up to \$10,000 per year in wages. The employee must live in the RC that same time period.

9. Are the employers and employees that use the Renewal Community and Empowerment Zone tax incentives required to be residents of the United States?

**Answer:** For purposes of figuring the RC and EZ credits and deductions, neither the owner nor the employees are required to be U.S. citizens.

10. When will the IRS tax forms be ready for Renewal Communities that use the available tax incentives?

**Answer:** The IRS is developing these forms and plans to release them in the fall of 2002.